



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package via Canada Post Registered Mail on September 7, 2017.

I accept the undisputed affirmed evidence of both parties and find that both parties have been properly served with the notice of hearing package as per 90 of the Act.

The tenant also stated that a documentary evidence package was left in the landlord's mailbox on December 4, 2017 in the presence of a witness. The landlord disputed receiving the tenant's documentary evidence package. The tenant is unable to provide any proof of service of the submitted evidence. As such, I find that the tenant's documentary evidence package shall be excluded from consideration for lack of service.

The landlord submitted a late documentary evidence package on March 15, 2018 via Canada Post Registered Mail to the tenant. The tenant confirmed receipt of this package and does not take any issue with the late service. As such, the landlord's documentary evidence is accepted.

Issue(s) to be Decided

Is the tenant entitled to a monetary order for money owed or compensation for damage or loss, return of the security deposit and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that there is no signed tenancy agreement, but that the landlord had purchased the rental property and assumed the responsibilities as the new landlord from the previous landlord. Both parties agreed that the original tenancy began on March 1, 2015 and was on a month-to-month basis. The monthly rent began at \$840.00 payable on the 1st day of each month and that it was later reduced to \$800.00 per month. A security deposit of \$420.00 was paid.

During the hearing it was clarified with both parties that the tenant's additional monetary claims would not be considered. They are:

\$14.39	Registered Mail (letter for forwarding address)
\$11.34	Registered Mail (Hearing Package)
\$420.00	Compensation, Fail to Comply Sec. 38(6)

Both parties were informed that Section 72 of the Act addresses **Director's orders: fees and monetary order**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. Accordingly, the Landlord's claim for recovery of litigation costs (registered mail) are dismissed.

The tenant's request under section 38 of the Act shall be addressed as part of the hearing. The tenant seeks a return of double the original \$420.00 security deposit (\$840.00) and recovery of the \$100.00 filing fee for total of \$940.00.

Both parties confirmed in their direct testimony that the tenancy ended on June 30, 2017 and that as of the date of this hearing the landlord has failed to return the \$420.00 security deposit that was paid. Both parties agreed that the tenant gave her forwarding address in writing to the landlord on July 4, 2017 via Canada Post Registered Mail

requesting the return of the \$420.00 security deposit. Both parties agreed that the tenant did not provide permission to the landlord to retain the \$420.00 security deposit. The landlord also stated that at no time has authorization been given by the Residential Tenancy Branch for the landlord to retain the \$420.00 security deposit. The landlord claimed that the security deposit was being held against the landlord's claims of damage(s) to the rental premises caused by the tenant.

Analysis

Section 38 of the Act requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the Act equivalent to the value of the security and/or pet damage deposit(s).

In this case, I accept the undisputed affirmed evidence of both parties and find that the tenant provided her forwarding address in writing to the landlord for the return of the \$420.00 security deposit on July 4, 2017. The landlord confirmed that at an application for dispute was not filed within 15 days after the end of tenancy on June 30, 2017 or when the tenant's forwarding address in writing was received via registered mail on July 4, 2017. The landlord confirmed that the \$420.00 security deposit is still currently held by the landlord. As such, I find that the tenant is entitled to return of the original \$420.00 security deposit.

Pursuant to section 38 (6) of the Act, I find that the landlord failed to return the \$420.00 security deposit, nor did the landlord file an application for dispute within 15 days of receiving the tenant's forwarding address in writing on July 4, 2017. As such, the tenant is entitled to compensation of \$420.00 which is equal to the security deposit for failing to comply with the Act.

The tenant has established a total monetary claim of \$840.00.

The tenant having been successful is also entitled to recovery of the \$100.00 filing fee.

Conclusion

The tenant is granted a monetary order for \$940.00.

This order must be served upon the landlord. Should the landlord fail to comply with the order, the order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 20, 2018

Residential Tenancy Branch